121 FERC ¶ 61,099
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2007

In Reply Refer To:
Vitol Inc. and Natural Gas Pipeline Co.
of America
Docket No. RP07-694-000

Dewey Ballantine, L.L.P.
975 F Street, N.W.
Washington, D.C. 20004-1405

Attention: James F. Bowe, Jr., Attorney for Vitol Inc.

Reference: Waiver Requests

Ladies and Gentlemen:

1. On September 14, 2007, Vitol Inc. (Vitol) and Natural Gas Pipeline Company of America (Natural) (collectively, the Petitioners) filed a joint petition for limited waivers of certain Commission policies and regulations and certain pipeline tariff provisions to facilitate a prearranged release of all of Vitol's natural gas assets. In sum, the Petitioners request waiver of: (i) the Commission's policy espoused in Order No. 636-A[1] prohibiting the tying of non-jurisdictional gas purchase contracts to released transportation capacity; (ii) certain otherwise applicable capacity release provisions set forth in the FERC Gas Tariffs of Natural and Egan Hub Storage, L.L.C. (Egan Hub); and, (iii) any other waivers the Commission may deem necessary in the circumstances. Vitol states that it is

[1] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

requesting the waivers because it plans to liquidate its natural gas portfolio. Petitioners request expedited Commission action by October 24, 2007. As discussed below, the Commission grants the requested waivers.

2. Vitol is an affiliate of the Vitol Group, an independent oil marketer engaged in the trading of various commodities in North America, including crude oil, petroleum products, and natural gas. Vitol is planning to dispose of its existing natural gas assets, including inventory gas, storage and transportation agreements, and financial contracts. The portfolio Vitol is disposing of includes: (1) six firm storage service agreements with Natural under Rate Schedule NSS (nominated firm storage service) for a total of 17,104,875 dekatherms (Dth) of long-term maximum rate capacity;[2] (2) a firm transportation service agreement (FTSA) with Natural to become available with the completion of Natural's recently certified Louisiana Expansion Project,[3] providing for a total maximum daily quantity of 145,000 Dth between a primary receipt point at an interconnection with Alliance Pipeline, L.P., and a primary delivery point at Henry Hub; (3) two precedent agreements relating to the referenced 145,000 Dth per day that will remain effective until commencement of service under that FTSA; (4) two long-term firm storage service agreements with Egan Hub under Rate Schedule FSS (firm storage service) for a total maximum storage quantity (MSQ) of 2,500,000 Dth, the rates for which have been established by negotiation under Egan Hub's market-based rate authority; (5) a quantity of natural gas in storage equal to the MSQs under each of Vitol's individual storage contracts, which in total is 19,604,875 Dth of gas; and, (6) related financial contracts through which Vitol has sought to protect the value of its storage inventory.

3. Vitol states that this disposition will permit it to redeploy the capital committed to its existing storage positions to support other activities consistent with its strategic plan. Vitol states that in order to exit the natural gas trading and marketing business efficiently, and to minimize disruption and inconvenience to its counterparties, it has agreed to sell or transfer this portfolio to a third party Prearranged Replacement Shipper. Vitol states that to facilitate a smooth transition, it has agreed to make certain personnel familiar with its portfolio available to the purchaser on a consulting basis through March 2008.

4. According to Vitol, it has entered into a Purchase and Sale Agreement with a Prearranged Replacement Shipper who has agreed to make a lump-sum payment to Vitol in exchange for the assets, and has agreed to pay each interstate pipeline company the

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[2] Vitol notes that one of these agreements provides for a discounted rate, with the discount term expiring on March 31, 2008. At the expiration of this discount term, the contract rate will be Natural's applicable maximum tariff rate.

[3] *See, Natural Gas Pipeline Co. of America*, 120 FERC ¶ 61,004 (2007).

stated contract rate for the FERC-jurisdictional transportation and storage agreements for the remaining primary term of each contract. Vitol states that the Prearranged

Replacement Shipper also represents in the Purchase and Sale Agreement that it will agree to be bound by all terms and conditions of the service agreements it will receive and by all relevant provisions of each pipeline company's FERC Gas Tariff.

5. Vitol states that it proposes to dispose of its portfolio through a bidding process that the Commission has found acceptable in comparable cases involving requests for waivers to accommodate a shipper's divestiture of its natural gas trading business. Vitol states that Natural has agreed to act as the host pipeline for purposes of facilitating an open and transparent auction for the portfolio. Vitol states that Natural will treat the disposition of Vitol's portfolio as if it involved a single prearranged release transaction and will post the transaction on its interactive Internet website for competing bids, using forms the Commission has approved in similar circumstances. Vitol states that each service agreement and precedent agreement will be separately identified in the posting, including pertinent quantities involved. Vitol states that Egan Hub, whose capacity is included in the portfolio, will be asked to post an informational notice on its Internet website advising parties that Vitol's Egan Hub storage capacity will be offered for bid as part of the larger portfolio. Vitol adds that it will require each prospective bidder to provide evidence of its credit rating.

6. Vitol states that, under its bidding process, qualified bidders will have ten days to evaluate the portfolio and determine whether they are willing to submit a bid. It asserts that the Commission found the ten-day bid evaluation period acceptable in cases involving portfolios considerably larger than Vitol's portfolio, citing *DEMA*.[4] Vitol states that if any bidder submits a bid higher than the bid submitted by the Prearranged Replacement Shipper, the Prearranged Replacement Shipper will have one day to match the bid, and will receive the portfolio should it elect to match the bid. If the Prearranged Replacement Shipper does not elect to match the bid, the qualified bidder that bid the highest price will be awarded the portfolio. Vitol states that it will ensure that an informational notice advising all prospective bidders and the public of the results of the bidding process is posted on the Natural and Egan Hub Internet websites. Vitol adds that closing of the sale of its portfolio will occur on December 26, 2007, in accordance with its Purchase and Sale Agreement.

7. Vitol states that the price to be paid for its portfolio will reflect the value of the portfolio as a whole, including the commodity value of the natural gas Vitol holds in storage inventory, the locational and option value of the gas, and the value of the related

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[4] *Duke Energy Marketing America, L.L.C.*, 114 FERC ¶ 61,198 at 61,661 (2006).

physical and financial contracts. According to Vitol, the successful bidder purchasing the portfolio will not pay, and Vitol will not receive, a rate higher than the stated contract rate for any of the FERC-jurisdictional service agreements.

8. The Commission noticed Vitol's filing on September 17, 2007, allowing for protests as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted.

Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments.

9. The Petitioners have requested various waivers of Commission policies and regulations, and certain pipeline tariff provisions, so that Vitol may exit the natural gas marketing business by selling its operational portfolio to a Prearranged Replacement Shipper or a third party bidder. The Commission has previously determined that a releasing shipper that is attempting to exit the natural gas business should, within certain limitations, be permitted to exit in a rational and orderly fashion, if such action is open and will not unduly discriminate against other shippers.[5] Here, Vitol and Natural have proposed an open and transparent auction process for the disposition of Vitol's operational portfolio. Accordingly, the Commission will grant waiver of the Commission's Order No. 636-A policy regarding the tying of gas delivery contracts to released transportation capacity since the sale of Vitol's entire operational portfolio as an integrated package will permit Vitol to exit the natural gas business in an orderly and rational manner. Such action is consistent with Commission action in the cases cited in Footnote No. 5.

10. Finally, the Commission will grant waiver of the various tariff provisions of Natural's and Egan Hub's FERC Gas Tariffs to permit Natural to serve as host pipeline in the contemplated auction procedure and to permit Egan Hub to post the related

[5] *See*, *Northwest Pipeline Corporation*, 109 FERC ¶ 61,044 (2004); *Duke Energy Marketing America, LLC*, 114 FERC ¶ 61,198 (2006); and *Wasatch Energy, L.L.C.*, 118 FERC ¶ 61,173 (2007).

informational notices on its website. These pipeline-specific waivers will permit an open and transparent auction process that will permit Vitol to exit the natural gas business in a rational and orderly manner.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

cc: All Parties

Maria Kyres Pavlou
Assistant General Attorneuy
Natural Gas Pipeline Company of America
747 East 22nd Street
Lombard, Illinois 60148

James C. Dyer, IV
Vitol, Inc.
1100 Louisiana Street, Suite 5500
Houston, Texas 77002-5255

Bruce H. Newsome, Vice President
Natural Gas Pipeline Co. of America
747 East 22nd Street
Lombard, Illinois 60148